

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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ESTHEFANY HEREDIA, ESLAINI :  
FERNANDEZ, and ESTELA TAVERAS, :  
Individually and on Behalf of All Other :  
Persons Similarly Situated, : Docket No.: 17-cv-6219 (RWL)  
:  
Plaintiffs, : **DECLARATION OF KEVIN J.**  
- against - : **O'CONNOR IN SUPPORT OF**  
: **DEFENDANTS' MOTION FOR**  
: **SUMMARY JUDGMENT**  
AMERICARE, INC., MARTIN :  
KLEINMAN and JOHN DOES #1-10, :  
:  
Defendants. :  
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**KEVIN J. O'CONNOR**, an attorney duly admitted to practice law in New York,  
under penalties of perjury, states as follows:

1. I am a member of Peckar & Abramson, P.C., attorneys for defendants Americare, Inc. (“Americare”) and Martin Kleinman (“Kleinman”)(collectively, “Defendants”).
2. I submit this Declaration in support of Defendants’ motion for an Order pursuant to Fed. R. Civ. P. 56(a) granting summary judgment in favor of Defendants and against plaintiffs Esthefany Heredia (“Heredia”), Eslaini Fernandez (“Fernandez”) and Estela Taveras (“Taveras”)(collectively, “Plaintiffs”) on the remaining causes of action, including for: (1) violations of the Fair Labor Standards Act, 29 U.S.C. §§ 201 *et seq.* (“FLSA”); (2) violations of the New York Labor Law §§ 650 *et seq.* (“NYLL”); (3) breach of contract as third party beneficiaries of an alleged Wage Party Act (“WPA”) Contract with New York State; (4) Unjust Enrichment; (5) violations of the Wage Parity Act Minimum Wage Requirement; and (6) breach of contract.

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3. A true and accurate copy of redacted excerpts from Heredia's Deposition Transcript is attached hereto as Exhibit A.

4. A true and accurate copy of Exhibit 2 to Heredia's Deposition, List of Do's and Don'ts with Acknowledgment, is attached hereto as Exhibit B.

5. A true and accurate copy of Exhibit 4 to Heredia's Deposition, Notice and Acknowledgment of Pay Rate and Payday, is attached hereto as Exhibit C.

6. A true and accurate copy of Exhibit 5 to Heredia's Deposition, Acknowledgement of Work Rules for Home Health Aides, is attached hereto as Exhibit D.

7. A true and accurate copy of Exhibit 3 to Heredia's Deposition, Home Health Aide Agreement "Live in" Case, is attached hereto as Exhibit E.

8. A true and accurate copy of Exhibit 6 to Heredia's Deposition, Call In/Call Out Acknowledgement, is attached hereto as Exhibit F.

9. A true and accurate copy of redacted excerpts from Taveras' Deposition Transcript is attached hereto as Exhibit G.

10. A true and accurate copy of Exhibit 2 to Taveras' Deposition, List of Do's and Don'ts with Acknowledgment, is attached hereto as Exhibit H.

11. A true and accurate copy of Exhibit 4 to Taveras' Deposition, Notice and Acknowledgment of Pay Rate and Payday, is attached hereto as Exhibit I.

12. A true and accurate copy of Exhibit 5 to Taveras' Deposition, Call In/Call Out Acknowledgement, is attached hereto as Exhibit J.

13. A true and accurate copy of Exhibit 9 to Taveras' Deposition, Home Health Aide Work Rules, is attached hereto as Exhibit K.

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14. A true and accurate copy of Exhibit 10 to Taveras' Deposition, Acknowledgement of Work Rules for Home Health Aides, is attached hereto as Exhibit L.

15. A true and accurate copy of Exhibit 11 to Taveras' Deposition, Home Health Aide Employee Manual, is attached hereto as Exhibit M.

16. A true and accurate copy of Exhibit 3 to Taveras' Deposition, Employee Handbook Acknowledgement, is attached hereto as Exhibit N.

17. A true and accurate copy of redacted excerpts from Fernandez's Deposition Transcript is attached hereto as Exhibit O.

18. A true and accurate copy of Exhibit 2 to Fernandez's Deposition, List of Do's and Don'ts with Acknowledgment, is attached hereto as Exhibit P.

19. A true and accurate copy of Exhibit 3 to Fernandez's Deposition, Home Health Aide Agreement "Live in" Case, is attached hereto as Exhibit Q.

20. A true and accurate copy of Exhibit 5 to Fernandez's Deposition, Employee Handbook Acknowledgement, is attached hereto as Exhibit R.

21. A true and accurate copy of Exhibit 7 to Fernandez's Deposition, Notice and Acknowledgment of Pay Rate and Payday, is attached hereto as Exhibit S.

22. A true and accurate copy of Exhibit 8 to Fernandez's Deposition, Call In/Call Out Acknowledgement, is attached hereto as Exhibit T.

23. A true and accurate copy of excerpts from Gallagher's Deposition Transcript is attached hereto as Exhibit U.

24. A true and accurate copy of excerpts from Falotico's Deposition Transcript is attached hereto as Exhibit V.

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25. A true and accurate copy of the Home Health Aide Agreement “Live in” Case, acknowledged by Taveras, produced in discovery as AMERICARE 1018, is attached hereto as Exhibit W.

26. A true and accurate copy of the “Live in” Case IVR Instructions, produced in discovery as AMERICARE 5082-5085, is attached hereto as Exhibit X.

27. Americare produced duty sheets for each of the Plaintiffs, which were date-stamped AMERICARE 1426-4371; 4463-5014.<sup>1</sup> A review of those duty sheets showed that none of them ever called out through the system to state that they missed their sleep or meal breaks.

**WHEREFORE**, Defendants respectfully request that the Court grant their motion for summary judgment in its entirety, and for such other and further relief as the Court may deem just and proper.

Dated: January 17, 2020

*/s/ Kevin J. O'Connor*

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Kevin J. O'Connor

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<sup>1</sup> Due to the voluminous nature of these records, they will be provided to the Court upon request.